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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JASMEN HOLLOWAY, AMY GARCIA,
CHERYL CHAPPEL, ERIC
BLACKSHER, JESSICA TREAS,
LAWRENCE SANTIAGO, JR.,
MUEMBO MUANZA, MAURICE
CALHOUN, and NICHOLAS DIXON, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

BEST BUY CO., INC. and BEST BUY
STORES, L.P.,

Defendants.

Case No. C-05-5056 PJH (MEJ)

**NOTICE OF MOTION AND MOTION
FOR (1) PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT; (2)
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASSES; AND (3)
SETTING OF SCHEDULE FOR FINAL
APPROVAL; AND MEMORANDUM IN
SUPPORT**

Hearing Date: August 3, 2011
Hearing Time: 9:00 A.M.
Courtroom of the Hon. Phyllis J. Hamilton

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on Wednesday August 3, 2011 at 9:00 A.M. in the courtroom of the Honorable Phyllis J. Hamilton, 1301 Clay Street, Oakland, California 94612, Courtroom 3, Plaintiffs will and hereby do move for an Order (1) preliminarily approving the proposed class action settlement and proposed Consent Decree; (2) provisionally certifying the proposed Settlement Classes; (3) approving and directing distribution of Notice of the Settlement; and (4) setting a schedule for the final settlement approval process. Named Plaintiffs' motion for Preliminary Settlement approval and provisional class certification is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities in Support, the Declarations of James M. Finberg and Daniel Hutchinson filed concurrently, and the pleadings and filings in this action. This motion is made pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), 23(e), and 23(g).

Respectfully Submitted,

Dated: June 17, 2011

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The parties have reached a proposed settlement that, if approved by the Court, will fully resolve this class action lawsuit. The Parties ask the Court to (1) preliminarily approve the proposed Consent Decree (attached as Exhibit 1 to the proposed order granting preliminary approval filed concurrently); (2) direct distribution of the proposed Notice (attached as Exhibit 2 to the proposed order); and (3) approve the proposed schedule for final approval. In connection with this settlement, the Parties also ask the Court to provisionally certify the injunctive and declaratory relief claims of three Classes of African American, Latino, and female employees of Defendants Best Buy Co. Inc. and Best Buy LLP (“Best Buy”) under Federal Rules of Civil Procedure 23(a) and 23(b)(2).

The proposed settlement satisfies the criteria for preliminary approval under federal law: it was negotiated at arms length; falls well within the range of possible approval; and provides extensive injunctive relief that will materially advance the goal of equal employment opportunity for African Americans, Latinos, and women at Best Buy.

The proposed Settlement Classes, which seek certification only of claims for declaratory or injunctive relief, satisfy the requirement of Federal Rules of Civil Procedure 23(a) and 23(b)(2). The Classes are so numerous that joinder is impracticable. There are questions of law and fact common to the Classes. The claims of the Class Representatives are typical of those of the Classes they represent. The Class Representatives have no conflicts and have retained experienced Counsel. The Classes assert claims for declaratory and injunctive relief applicable to the Classes as a whole.

II. PROCEDURAL HISTORY AND BACKGROUND

The Named Plaintiffs, eight current and former employees of Best Buy and one applicant to Best Buy for employment,¹ brought this action against Best Buy after filing timely charges of race and gender discrimination with the Equal Employment Opportunity Commission on behalf

¹ The Named Plaintiffs are Jasmen Holloway, Amy Garcia, Cheryl Chappel, Eric Blacksher, Jessica Treas, Lawrence Santiago, Jr., Muembo Muanza, Maurice Calhoun, and Nicholas Dixon.

1 of themselves and similarly situated women and minorities. Named Plaintiffs filed an initial
 2 Complaint on December 8, 2005. In their Third Amended Complaint, filed on January 6, 2009,
 3 Plaintiffs alleged that Best Buy denies employment, desirable job assignments,
 4 promotions/transfers, and equal exempt compensation to African Americans; denies desirable job
 5 assignments, promotions/transfers, and exempt compensation to women; and denies desirable job
 6 assignments and promotions/transfers to Latino employees of Best Buy retail stores in the United
 7 States. (Dkt. No. 142-43.) Based on these allegations, Plaintiffs asserted disparate impact and
 8 treatment claims for race and gender discrimination under Title VII of the Civil Rights Act of
 9 1964, race discrimination claims under 42 U.S.C. § 1981 (as to the Latino and African American
 10 classes), and violations of the California Fair Employment and Housing Act (as to those class
 11 members who worked in California during the class period).

12 Named Plaintiffs vigorously prosecuted this case, and Best Buy vigorously contested it.
 13 Class Counsel engaged in a broad and thorough investigation of the claims of the Settlement
 14 Classes. Class Counsel propounded extensive written discovery, including 15 sets of Requests for
 15 Production of Documents and four sets of Interrogatories. (Dkt. No. 266-2, Cervantez Decl. ¶¶ 3,
 16 5.) In response to these discovery requests, Best Buy produced approximately 1.5 million
 17 documents, totaling over 12 million pages (*id.*), and produced comprehensive employment data
 18 covering approximately 500,000 Best Buy employees (Drogin Report [Dkt. No.344-4] at ¶ 7.a.).

19 Plaintiffs' Counsel have expended thousands of hours thoroughly reviewing and coding the
 20 documents produced, thereby gaining a better understanding of Defendants' organization,
 21 policies, and practices (Dkt. No. 266-2, Cervantez Decl. ¶ 4), which has in turn allowed Plaintiffs
 22 to develop and refine the claims now brought on behalf of the class.

23 In addition, Plaintiffs' Counsel have taken 23 depositions of Rule 30(b)(6) designees, and
 24 10 additional fact witnesses, and defended over 50 depositions taken by Defendants. (Dkt. No.
 25 266-2, Cervantez Decl. ¶¶ 8-9, 11-14.) Plaintiffs' Counsel retained an expert statistician, Dr.
 26 Richard Drogin, and an expert sociologist, Dr. Barbara Reskin, to analyze Best Buy's personnel
 27 data and practices. (Cervantez Decl. ¶¶ 11-13.) Drs. Drogin and Reskin produced extensive
 28 reports and were deposed by Defendants. (Dkt. No. 266-2, Cervantez Decl. ¶¶ 11-13.) Class

1 Counsel spoke with many current and former Best Buy employees regarding their experiences,
 2 and gathered over 100 declarations from these potential class members. (Dkt. No. 266-2,
 3 Cervantez Decl. ¶ 10.)

4 The parties collectively submitted reports and rebuttal reports from nine expert witnesses,
 5 including statistical experts, social science experts, and labor economists. (Dkt. 266-2 ¶¶ 11-14.)
 6 The parties deposed eight of those experts. (*Id.*)

7 The parties also engaged in active motion practice. Plaintiffs' Motion for Class
 8 Certification was fully briefed and argued, then re-briefed after changes in the applicable law.
 9 (Dkt. Nos.156-160, 185-189, 267-310, 339-342.)

10 The parties have discussed the possibility of settlement over the course of many years.
 11 There were several in person meetings, and many telephone conferences. The proposed
 12 settlement is the result of non-collusive arms-length bargaining. (Finberg Decl. ¶ 3.)

13 The parties first reached agreement on the terms of class-wide injunctive relief, and then
 14 addressed the individual claims of the Named Plaintiffs. Only after completing these negotiations
 15 did they negotiate over attorneys' fees and costs. (*Id.*)

16 **II. SUMMARY OF SETTLEMENT TERMS**

17 The proposed Consent Decree provides comprehensive class-wide injunctive relief
 18 tailored to the particular violations alleged, in exchange for a release by Settlement Class
 19 Members of Class claims for declaratory and injunctive relief. Settlement Class Members will
 20 not release claims for individual monetary relief or individual injunctive relief.

21 The proposed Consent Decree also provides for complete resolution of all individual
 22 claims of the Named Plaintiffs, provides that Class Counsel can apply to the Court for attorneys
 23 fees and reimbursement of costs and expenses, and that the Named Plaintiffs can apply to the
 24 Court for service awards.

25 **A. Class-wide Injunctive Relief**

26 During the four-year period of the Decree, Best Buy will implement comprehensive
 27 affirmative relief addressing the hiring, assignment, promotion, and exempt compensation claims
 28 in this action, including the following:

1 **1. Hiring and Promotions**

2 Best Buy has developed and will continue to use standardized selection procedures
 3 (including using new interview guides prepared by an industrial organization psychologist (“I/O
 4 psychologist”) based on job analyses prepared by an I/O psychologist), for all retail store
 5 hiring/job assignment and for promotions to supervisor or exempt manager positions. Class
 6 Counsel have retained their own, independent I/O psychologist who has reviewed the new
 7 interview guides and found them materially improved from the older interview guides challenged
 8 by Plaintiffs. (Finberg Decl. ¶ 4.) Best Buy will make material changes to these selection
 9 procedures only with the approval of an I/O psychologist. (Consent Decree Sections II.C and D.)

10 Best Buy will designate a qualified individual whose primary purpose will be to oversee
 11 Best Buy’s processes for encouraging the recruitment and retention of qualified diverse
 12 management candidates, including qualified African Americans, Latinos, and women, throughout
 13 the company. (Consent Decree Section II.C.5.)

14 Best Buy will also implement processes to increase the pool of African American, Latino,
 15 and female employees qualified for promotion to management at all its retail stores, and will
 16 continue to ensure that any training programs and formal mentoring opportunities provided will
 17 be available to all employees regardless of race or gender, except when such opportunities are
 18 targeted at minority or female employees. (Consent Decree Section II.D.5.)

19 Best Buy will include with every job posted on the company’s online application system a
 20 clear description of the position’s duties and the required qualifications. (Consent Decree Section
 21 II.C.4.)

22 Best Buy will post all open senior, supervisor, and exempt manager positions on an
 23 electronic system accessible to all Best Buy store-level employees no less than 5 days before the
 24 position is filled. In the case of business necessity, such as company reorganization, or employee-
 25 initiated transfers, Best Buy will be excused from the posting requirement. Business necessity
 26 will not include preference for a particular candidate or urgency to fill a position. (Consent
 27 Decree Section II.D.3.)

28 Best Buy will create an electronic process for current store-level employees to register

1 their interest in any full-time, senior, supervisor, or exempt positions, and will remind employees
 2 to renew their interest at 6-month intervals. Before selecting outside applicants or employees who
 3 have not registered an interest, managers will be required to consider employees who have
 4 registered their interest through this system. (Consent Section II.D.1.)

5 **2. Exempt Compensation**

6 Best Buy will retain an I/O psychologist or outside compensation specialist to review Best
 7 Buy's compensation policies and make recommendations, and will train its managers on the use
 8 of any tools developed by this consultant. Best Buy will review the compensation of exempt
 9 managers regularly (no less than once annually) to ensure that the company is complying with its
 10 non-discrimination policies. (Consent Decree Section II.E.)

11 **3. Communications, Training, and Assessment**

12 Best Buy will continuously post its non-discrimination, anti-harassment, and anti-
 13 retaliation policies on the company's intranet website, along with an annual message from the
 14 CEO and Executive Vice President, Retail Stores (or the equivalent). A high ranking Best Buy
 15 officer will make a statement in support of these policies at annual regional or national meetings
 16 attended by store General Managers during the term of the Decree. (Consent Decree Section
 17 II.B.)

18 Within 6 months of the date the Decree becomes effective, Best Buy will train all its
 19 General Managers regarding the terms of the Decree pertaining to hiring, promotions, the registry
 20 system, job postings, the complaint procedure, the company's diversity policies, and the
 21 distinction between customer marketing and employee staffing. Best Buy will also provide the
 22 following training: all new hires will be trained on the company's non-discrimination, anti-
 23 harassment, and anti-retaliation policies; all employees will be trained on use of the registry
 24 system; supervisors and managers will receive annual diversity trainings; and staff involved in
 25 hiring and promotions will be trained on use of the selection procedures, including the company's
 26 interest in diversity. (Consent Decree Sections II.C, D, and F.)

27 Best Buy shall explicitly train managers that Best Buy's marketing strategies should not
 28 be interpreted to influence or guide Best Buy's hiring, recruitment, job assignment, transfer,

1 promotions, or compensation practices. (Consent Decree Section II.F.3.)

2 Best Buy will evaluate all supervisors, exempt store managers, and district managers
3 annually on their ability to manage a diverse workforce, including their compliance with the
4 terms of the Consent Decree. An I/O psychologist will advise Best Buy on how best to conduct
5 and weigh these evaluations. (Consent Decree Section II.H.)

6 **4. Complaint Process**

7 Best Buy will continue to provide a procedure for employees or job applicants to report
8 discrimination or retaliation on the basis of race, color, national origin, or gender, or alleged
9 violations of the Consent Decree. This procedure will be communicated to new hires and posted
10 on the company's intranet website continuously, and on the intranet home page for 7 consecutive
11 days at least once annually. The complaints and investigations will be handled by Best Buy's
12 Human Resources personnel. In cases where a complaint is substantiated, Best Buy's policy will
13 be to impose appropriate discipline, up to and including discharge. (Consent Decree Section II.G.)

14 **5. Monitoring and Enforcement of the Decree**

15 The term of the Decree shall be 4 years from the date the Decree becomes effective.
16 (Consent Decree Section II.M.)

17 Best Buy will make good faith best efforts to implement the provisions of the Decree as
18 soon as reasonably practicable. If Best Buy requires more than 12 months to fully implement the
19 Decree, the term shall be extended with respect to the specific provisions not yet implemented by
20 the additional time over 12 months required for implementation. (Consent Decree Section II.L.)

21 Best Buy shall designate an officer ("Monitor") who will oversee Best Buy's policies and
22 practices to ensure compliance with the Decree. The Monitor will have access to statistical data
23 necessary to ensure that the company is complying with the terms of the Decree in its hiring, job
24 assignment, promotion, and compensation practices. Within 6 months after the decree becomes
25 effective, and annually thereafter for the term of the Decree, the Monitor will file a Certificate of
26 Compliance with the Court. (Consent Decree Section II.I.) In addition, Best Buy's corporate
27 audit department shall regularly audit to insure compliance with the terms of the Decree.
28 (Consent Decree Sections II.C.2., II.D.1.d., II.D.3.c., II.E.3., II.F.5.)

1 The Court shall retain jurisdiction during the term of the Decree to enforce its provisions.
 2 (Consent Decree Section II.K.)

3 **B. Class Member Release**

4 Under the Consent Decree members of the Settlement Classes will release certain class
 5 claims seeking declaratory or injunctive relief. Settlement Class Members will not, however,
 6 release any claims against Best Buy for individual injunctive relief or for individual monetary
 7 relief.

8 The Consent Decree provides as follows:

9 The members of the Settlement Classes who are not Named Plaintiffs release all claims
 10 for classwide injunctive and declaratory relief of whatever nature, known or unknown that
 11 the Named Plaintiffs and members of the Settlement Classes may have against Best Buy,
 12 its subsidiaries and affiliated companies, and in the case of all such entities, their
 13 respective past and present owners, representatives, officers, directors, attorneys, agents,
 14 employees, insurers, successors and assigns (collectively referred to as the "Released
 15 Parties"), arising out of the same transactions, series of connected transactions,
 16 occurrences or nucleus of operative facts that form the basis of the claims that were or
 17 could have been asserted in the Civil Action including claims arising under the Civil
 18 Rights Act of 1866, as amended, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of
 19 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, the Fair Employment and Housing Act
 20 ("FEHA"), as amended, Cal. Gov. Code § 12940, *et seq.*, the Equal Pay Act, 29 U.S.C. §
 21 206, *et seq.*, or under any other federal, state, local or common laws or regulations. This
 22 release further includes, but is not limited to, claims for classwide injunctive or
 23 declaratory relief alleging a class-wide pattern and practice of race, national origin and
 24 gender discrimination in, or an unlawful disparate impact associated with, (1) recruitment,
 25 (2) pre-employment testing, (3) entry-level hiring, (4) job assignments, (5)
 26 promotions/transfers, (6) movement from Occasional/Seasonal to Regular status, (7)
 27 movement from part-time to full-time employment, or (8) the allocation of hours of work.
 28 This release includes and covers without limitation all actions, decisions, or omissions
 occurring up to and including the Preliminary Approval date as defined subject to the
 provisions set forth herein.

The members of the Settlement Classes who are not Named Plaintiffs do not release any
 claims for individual monetary relief, including without limitation back pay, front pay,
 compensatory damages, punitive damages, or prejudgment interest, nor do they release
 any claims for individual injunctive or declaratory relief for any past or current violations
 of Title VII, Section 1981, or FEHA, or for any relief that may be appropriate for any
 future violations of this Consent Decree or applicable law.

(Consent Decree Section V.)

C. Resolution of the Claims of the Named Plaintiffs

Best Buy has agreed to pay Named Plaintiffs a total of \$200,000 to settle all the Named
 Plaintiffs' claims for both individual monetary and individual injunctive relief. Unlike Settlement

1 Class Members, the Named Plaintiffs will release any and all claims against Best Buy arising out
 2 of their employment with Best Buy. The total sum will be distributed among the Named Plaintiffs
 3 as set forth in separate settlement agreements.² (Consent Decree Section VIII.)

4 **D. Service Payments for the Named Plaintiffs**

5 The Consent Decree provides that the nine Named Plaintiffs can apply to the Court for
 6 service payments not exceeding \$10,000 each, to compensate them for their role bringing and
 7 prosecuting this action. Each of the Plaintiffs was deposed, produced documents, and worked
 8 with Class Counsel acting on this matter. (Decl. of Daniel Hutchinson ¶¶ 3-7.) Class Counsel will
 9 file a separate motion for approval of the service payments to Named Plaintiffs. (Consent Decree
 10 Section IX.) Best Buy will not oppose the motion, and will pay the amount the Court awards, not
 11 exceeding \$10,000 per Named Plaintiff. The settlement is not contingent on the award of service
 12 payments to the Named Plaintiffs.

13 **E. Attorneys' Fees and Costs**

14 Additionally, Best Buy has agreed to pay Class Counsel certain attorneys' fees and to
 15 reimburse Class Counsel for the costs and expenses they have incurred in this action. Class
 16 Counsel will file a separate motion for approval of attorneys' fees and costs not to exceed
 17 \$9,999,999. Consent Decree Section X. Best Buy will not oppose that motion. Class Counsel
 18 have incurred almost \$2 million in costs and expenses in this case, and devoted many thousands
 19 of hours to this case, having a lodestar value of approximately \$16.2 million. (Finberg Decl. ¶ 7.)
 20 Accordingly, the amount that Best Buy has agreed to pay will compensate Class Counsel for less
 21 than half of their lodestar.

22 **II. ARGUMENT**

23 **A. The Court Should Grant Provisional Certification of the Settlement Classes**

24 Plaintiffs seek provisional certification of three injunctive relief settlement classes under
 25 Rule 23(b)(2):

26
 27 African American class: All African Americans who were employed in Best Buy retail
 stores within the United States for one or more days beginning on or after December 8,

28 ² The Parties request permission from the Court to file these agreements under seal.

2005 (the date the Complaint was filed) through the date that the Consent Decree terminates.

Latino class: All Latinos who were employed in Best Buy retail stores within the United States for one or more days beginning on or after December 8, 2005 (the date the Complaint was filed) through the date that the Consent Decree terminates.

Female class: All women who were employed in Best Buy retail stores within the United States for one or more days beginning on or after December 8, 2005 (the date the Complaint was filed) through the date that the Consent Decree terminates.

None of the Classes include Best Buy General Managers (for the time period during which Best Buy employed them as General Manager); persons who occupied Geek Squad or Service positions (for the time period during which they occupied those positions); or employees of Magnolia stand-alone stores (for the time period during which Magnolia employed them). (Consent Decree Section I.D.)

The Settlement Classes seek injunctive relief for disparate impact and treatment claims of race and gender discrimination under Title VII of the Civil Rights Act of 1964, race discrimination claims under 42 U.S.C. § 1981 (as to the Latino and African American classes), and violations of the California Fair Employment and Housing Act (as to those class members who worked in California during the class period).

The Settlement Classes meet the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a) and the injunctive relief requirements of Rule 23(b)(2).

1. The Settlement Classes Meet the Numerosity Requirement.

The numerosity requirement is met if “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Best Buy’s employee and payroll files show that each of the Settlement Classes is sufficiently numerous (each having many thousands of members, *see*, Dkt. No. 265) to make joinder impracticable. The numerosity requirement of Rule 23(a)(1) is therefore satisfied.

2. The Settlement Classes Meet the Commonality Requirement.

A class meets the commonality prerequisite if “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Plaintiffs allege that Best Buy maintains a company-wide practice and policy of discrimination that uniformly affects the members within each class. As a

1 result, the members of each class share the following common issues of law and fact: (1) whether
 2 Best Buy's employment policies and practices are intentionally discriminatory; (2) whether Best
 3 Buy's employment policies and practices have an adverse impact on African Americans, Latinos,
 4 and women; and (3) whether Title VII (as to all the classes), Section 1981 (as to the African
 5 American and Latino classes), and the California Fair Employment and Housing Act (as to those
 6 class members employed in California during the class period) have been violated.

7 Plaintiffs challenged specific Best Buy policies and practices relating to hiring, job
 8 assignment, promotions, and exempt compensation. In particular, Plaintiffs alleged that Best
 9 Buy's uniform use at all retail stores of a tap-on-the-shoulder system for hiring, job assignment,
 10 and promotions, and the use of standardless interview guides resulted in disparate impact. The
 11 posting, registration of interest and interview guide provisions of the proposed Consent Decree
 12 provide class-wide injunctive relief addressing these company-wide policies and practices.
 13 Plaintiffs also challenged Best Buy's uniform compensation guides for setting exempt
 14 compensation; these common policies are similarly addressed by the class-wide change in exempt
 15 compensation policies.

16 In addition, Plaintiffs alleged that Best Buy uses marketing strategies across its retail
 17 stores that focus on the buying habits of certain races and genders; Plaintiffs further alleged that
 18 these marketing strategies spilled over into hiring, assignment, and promotions decisions, leading
 19 store General Managers to prefer white males for sales and management positions. The proposed
 20 Consent Decree requires that "Best Buy shall explicitly train managers that these strategies should
 21 not be interpreted to influence or guide Best Buy's hiring, recruitment, job assignment, transfer,
 22 promotion, or compensation practices." (Consent Decree Sec. II.F.3.)

23 In these circumstances, the commonality requirement of Rule 23(a)(2) is satisfied. *See*,
 24 *e.g. Parra v. Bashas', Inc.*, 536 F.3d 975, 978 (9th Cir. 2008) (Commonality is a "permissive[]"
 25 and "flexible" standard.); *Hanlon v. Chrysler*, 150 F.3d 1011, 1019 (9th Cir. 1998) ("[S]hared
 26 legal issues with divergent factual predicates" or a "common core of salient facts coupled with
 27 disparate legal remedies within the class" suffices.).
 28

1 **3. The Settlement Classes Meet the Typicality Requirement.**

2 The typicality requirement is met if “the claims or defenses of the representative parties
3 are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Like commonality, the
4 typicality standard is “permissive,” and requires only that the Named Plaintiffs’ claims be
5 “reasonably coextensive with those of absent class members; they need not be substantially
6 identical.” *Staton v. Boeing*, 327 F.3d 938, 957 (9th Cir. 2003).

7 Named Plaintiffs Muembo Muanza and Maurice Calhoun are the Representatives of the
8 African American class. Their claims are typical of those of the African American class because
9 they arise out of the same policies, practices and causes of concern alleged on behalf of all
10 African American class members. (Dkt. 144, ¶¶ 99-112, 131-150.) The typicality requirement is
11 therefore satisfied as to the African American class.

12 Named Plaintiffs Jessica Treas and Lawrence Santiago, Jr. are the Representatives of the
13 Latino class. Their claims are typical of those of the Latino class because they arise out of the
14 same policies, practices and causes of concern alleged on behalf of all Latino class members.
15 (Dkt. 144, ¶¶ 79-98, 131-150.) The typicality requirement is therefore satisfied as to the Latino
16 class.

17 Named Plaintiffs Amy Garcia, Cheryl Chappel and Jessica Treas are the Representatives
18 of the female class. Their claims are typical of the female class because they arise out of the
19 same policies, practices and causes of concern alleged on behalf of all female class members.
20 (Dkt. 144, ¶¶ 59-74, 79-88, 151-164.) The typicality requirement is therefore satisfied as to the
21 female class.

22 **4. The Settlement Classes Are Adequately Represented.**

23 Under Rule 23(a)(4), the class representatives must “fairly and adequately protect the
24 interests of the class.” Fed. R. Civ. P. 23(a)(4). Named Plaintiffs Muembo Muanza, Maurice
25 Calhoun, Jessica Treas, Laurence Santiago, Jr., Amy Garcia, and Cheryl Chappel are adequate
26 representatives of the classes they represent because their interests are co-extensive with those of
27 the classes they represent and they have retained experienced counsel to represent the classes. *See*
28 Motion for Appointment as Class Counsel (Dkt. No 266). The adequate representation

1 requirement is therefore satisfied. *Staton*, 327 F.3d at 957.

2 **5. The Requirements of Rule 23(b)(2) Are Met.**

3 Certification is appropriate under Rule 23(b)(2) when the opposing party has “acted or
4 refused to act on grounds that apply generally to the class, so that final injunctive relief or
5 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P.
6 23(b)(2). Plaintiffs allege that Best Buy’s employment policies and practices discriminate against
7 or adversely impact all African American, Latino, and female employees of its United States
8 retail stores. They seek meaningful declaratory and injunctive relief that will apply to all members
9 of the African American, Latino, and female classes. Certification of such claims for class-wide
10 declaratory and injunctive relief is proper under Rule 23(b)(2).

11 **B. The Proposed Settlement Merits Preliminary Approval.**

12 To grant preliminary approval of the proposed settlement, the Court must find only that
13 the settlement is non-collusive and within “the range of possible approval.” *Young v. Polo Retail,*
14 *LLC*, 2006 WL 3050861, *5 (N.D. Cal.) (quoting *Schwartz v. Dallas Cowboys Football Club,*
15 *Ltd*, 157 F Supp 2d 561, 570 n.12 (ED Pa 2001); *see also In re Vitamins Antitrust Litig.*, 2001
16 WL 856292, *4-5 (D.D.C.); Newberg on Class Actions, Fourth Edition, § 11.25. The proposed
17 settlement more than satisfies these requirements.

18 **1. The Terms of the Proposed Settlement Are Fair.**

19 As long as “preliminary evaluation of the proposed settlement does not disclose grounds
20 to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class
21 representatives or of segments of the class, or excessive compensation for attorneys, and appears
22 to fall within the range of possible approval,” the Court should preliminarily approve the
23 settlement. *In re Vitamins*, 2001 WL 856292 at *4-5 (quoting Manual for Complex Litigation,
24 Third § 30.41 (West 1999). The Court may also direct the giving of notice to the class members
25 of a final approval hearing, “at which arguments and evidence may be presented in support of and
26 in opposition to the settlement.” *McNamara v. Bre-X Minerals Ltd.*, 214 F.R.D. 424, 430 (E.D.
27 Tex. 2002) (quoting Manual for Complex Litigation, Third, at 237); 4 Newberg §11.25 (quoting
28

1 same).³

2 Class Counsel, who are experienced employment discrimination and class action
3 attorneys, have engaged in extensive discovery and thoroughly investigated the facts of the case
4 and the class members' claims. (Dkt. No. 266-2.) As a result, Class Counsel can accurately
5 assess the strengths and weaknesses of the Plaintiffs' claims and the benefits of the proposed
6 settlement under the circumstances of this case. Class Counsel believe the injunctive relief
7 provided in the Consent Decree is fair, reasonable, and adequate, and will materially advance the
8 goal of equal employment opportunity for African American, Latino, and female employees of
9 Best Buy.

10 **2. Proposed Class Counsel Were Fully Informed When the Settlement Was**
11 **Reached.**

12 Class Counsel spent many thousands of hours litigating this case and vigorously
13 investigating the claims asserted against Best Buy. Through discovery, Class Counsel obtained
14 from Best Buy over 12 million pages of documents and comprehensive employment data
15 covering many hundreds of thousands of Best Buy employees. Class Counsel took 10 depositions
16 of factual witnesses, 23 depositions of corporate designees, and 5 depositions of expert witnesses.
17 Class Counsel also defended the depositions of 23 class members and 30 additional fact
18 witnesses. Additionally, Class Counsel received reports from statistical and social science expert
19 witnesses who reviewed thousands of documents and comprehensive payroll data relating to the
20 numerous policies and practices at issue in this case.

21 As a result, Class Counsel negotiated the proposed settlement with complete knowledge
22 regarding the strengths and weaknesses of the case and the benefits of the proposed settlement for
23 the class members.

24
25
26
27 ³ The fourth edition of the Manual for Complex Litigation was released in 2004 and does not
28 include this precise language, but instead suggests that if a court has "reservations" about any of
the issues described, it should "raise questions . . . and perhaps seek an independent review . . .
." Manual for Complex Litigation, Fourth, at 321. The end result is the same.

1 **3. The Settlement Provides Reasonable Relief for the Class Members' Injunctive**
 2 **Claims, in Light of the Risks and Delay of Protracted Litigation.**

3 Best Buy has denied any intentional discrimination against African Americans, Latinos, or
 4 women, and has denied that the company's employment policies or practices had a disparate
 5 impact on these groups. It is apparent from the proceedings to date and the parties' negotiations
 6 that if the case is not settled, Best Buy will continue to aggressively contest liability and the
 7 propriety of class certification.

8 Although Class Counsel believe that Plaintiffs' claims are meritorious, and that they
 9 would eventually prevail in certifying this case as a class action and on the merits, Class Counsel
 10 have also considered the risks associated with protracted litigation. Class Counsel have
 11 considered the possibility that the case, if not settled now, might not result in any injunctive relief
 12 for the class members, or might result in injunctive relief several years from now that is less
 13 favorable to the proposed class members than that offered by the proposed Consent Decree.
 14 (Finberg Dec., ¶¶ 5-6.) In light of these considerations, Class Counsel are satisfied that the terms
 15 and conditions of the Consent Decree are fair, reasonable and adequate and that the Consent
 16 Decree is in the best interests of the Settlement Classes. (*Id.*)

17 **4. The Settlement Is the Product of Serious, Arms' Length, Informed**
 18 **Negotiations.**

19 The Settlement resulted only after extensive, arms' length settlement negotiations that
 20 were conducted after rigorous discovery regarding the merits of the disputed claims. (*See Id.* ¶
 21 3.) The negotiations were protracted. The Parties met in person many times and had many
 22 conference calls. (*See Id.*) The proposed settlement is the non-collusive product of hard-fought
 23 litigation. (*See Id.*)

24 **5. The Proposed Service Payments to the Named Plaintiffs Are Reasonable.**

25 The Consent Decree provides for a service payment of up to \$10,000 to each of the
 26 Named Plaintiffs. This sum is reasonable in light of the important services the Named Plaintiffs
 27 performed for the benefit of the settlement classes. The Named Plaintiffs provided documents to
 28 Class Counsel, answered written questions from Best Buy's Counsel, and were deposed by Best

Buy's Counsel. They spent many hours working with proposed Class Counsel in developing the factual basis for the class claims asserted in this case. (Hutchinson Decl. ¶¶ 3-7.) In these circumstances, the service awards requested meet the standards set forth for such awards by the Ninth Circuit in *Staton v. Boeing*, 327 F.3d at 976-79. "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001), *quoting In re S. Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997)); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 300 (N.D. Cal. 1995) (approving \$50,000 participation award). Accordingly, the service payments proposed in the settlement are reasonable. Plaintiffs will file a separate motion for approval of the service payments.

6. The Proposed Attorneys' Fees And Cost Reimbursement Are Fair and Reasonable.

The Consent Decree provides for payment to Class Counsel of an amount not exceeding \$9,999,999, to reimburse Class Counsel for the costs and expenses they incurred in the course of litigating this matter and to pay Class Counsel for a portion of the time they devoted to this case. That amount will reimburse Class Counsel for the almost \$2 million in costs and expenses that they incurred in connection with prosecuting this action, and pay Class Counsel approximately half of Class Counsel's lodestar for time spent litigating this matter. (Finberg Dec. ¶7.)

That payment is fair and reasonable in light of applicable fee-shifting statutes. Title VII provides for a "reasonable attorney's fee" to a "prevailing party." 42 U.S.C. § 2000e-5(k). Similarly, "[i]n any action or proceeding to enforce a provision of [42 U.S.C.] section[] 1981 ... the court, in its discretion, may allow the prevailing party ... a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988(b). With respect to claims for declaratory and injunctive relief, it is uncontested that the Plaintiffs are a "prevailing party" for purposes of attorneys' fees. In *Texas State Teachers Ass'n v. Garland School District*, 489 U.S. 782 (1989), the Supreme Court ruled that a party is a "prevailing party" if it succeeds on a significant issue and receives some of the relief sought in the lawsuit. *See also Buckhannon Bd. and Care Home, Inc. v. W. Va Dep't of*

1 *Health & Human Res.*, 532 U.S. 598, 604 (2001) (“[C]ourt-ordered consent decrees create the
 2 ‘material alteration of the legal relationship of the parties’ necessary to permit an award of
 3 attorney’s fees.”). In the Ninth Circuit, a plaintiff prevails when he or she “enters into a legally
 4 enforceable settlement agreement against the defendant.” *Barrios v. California Interscholastic*
 5 *Federation*, 277 F.3d 1128, 1134 (9th Cir. 2002).

6 Class Counsel will file a separate motion for approval of attorneys’ fees and expenses.
 7 The settlement is not contingent upon the Court’s approval of any particular amount of attorneys’
 8 fees.

9 **7. The Resolution of the Individual Claims of the Named Plaintiffs is**
 10 **Reasonable.**

11 Unlike members of the Settlement Classes who will not be releasing any claims for
 12 individual monetary relief or individual injunctive or declaratory relief, the nine Named Plaintiffs
 13 will be releasing all of their discrimination claims against Best Buy arising out of their
 14 employment with Best Buy. In exchange for those broad releases, those nine Named Plaintiffs
 15 will receive an aggregate amount of \$200,000, which averages less than \$23,000 per person.

16 **C. The Court Should Approve the Proposed Notice and Notice Plan.**

17 **1. The Proposed Notice Is Appropriate.**

18 The proposed Notice (Exhibit 2 to the preliminary approval order) complies with due
 19 process and Rule 23. Notice is satisfactory if it “generally describes the terms of the settlement in
 20 sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be
 21 heard.” *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza*
 22 *v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)). The proposed notice fairly,
 23 plainly, and accurately describes the nature of this litigation, the settlement classes, and the
 24 essential terms of the Settlement and Decree, and the motions for service payments to Named
 25 Plaintiffs and for attorneys’ fees and costs, as required by Rule 23(h). Additionally, the notice
 26 identifies Class Counsel and clearly explains how class members may object or obtain more
 27 information about this litigation, the settlement, and the Decree.

28 The information provided in the notice gives the Class Members a fair and full

1 opportunity to consider the proposed settlement and the motions for attorneys' fees and costs and
 2 service payments, and to come forward and be heard if they desire. The content of the Notice
 3 satisfies the requirements of due process and Rule 23.

4 **2. The Notice Plan is Appropriate.**

5 Under Rule 23(e)(1), notice of a proposed settlement must be directed "in a reasonable
 6 manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). In a
 7 class settlement for injunctive relief only under Rule 23(b)(2), individualized notice is not
 8 required. *Compare* Fed. R. Civ. P. 23(c)(2)(A) *with* Fed. R. Civ. P. 23(c)(2)(B). Rather, in cases
 9 where the settlement will not release any individual monetary or injunctive relief claims, notice
 10 designed to reach "representative class members who may alert the court to inadequacies in
 11 representation" suffices. *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956, 962 (3d Cir. 1983);
 12 *see also* Advisory Committee Notes to 2003 amendment to Fed. R. Civ. P. 23(c)(2).

13 The parties' proposed plan for distributing the Notice (attached as Exhibit 2 to the
 14 proposed preliminary approval order) is a reasonable method to inform class members of the
 15 terms of the settlement, the motions for attorneys' fees and service payments, and the class
 16 members' right to object. Under the proposed Notice plan, Best Buy will distribute the Notice by
 17 email to employees with Best Buy email addresses and to all employees by posting it in
 18 conspicuous areas of U.S. retail stores frequented by current employees. Class Counsel will mail
 19 the Notice to all persons in the class member database maintained by Class Counsel, and will post
 20 the Notice on the website Class Counsel maintains regarding this action, together with a complete
 21 copy of the Consent Decree and a complete copy of its Fees and Costs Application and the
 22 Motion for Service Payments. Class Counsel will also post these documents on
 23 www.BBClassaction.com. Best Buy will also post the Notice at www.BestBuy.com, under the
 24 existing heading "LEGAL."

25 This Notice Plan provides a reasonable manner of reaching current and former employees
 26 of Best Buy who may be class members and therefore complies with the requirements of due
 27 process and Rule 23(e)(1).
 28

D. The Court Should Set a Final Settlement Approval Schedule

The last step in the settlement approval process is the formal hearing, at which the Court may hear all evidence and argument necessary to evaluate the settlement. The parties propose the following schedule for final approval:

August 17, 2011	Last day for Notices to be distributed to class members.
October 1, 2011	Objection postmark deadline. (45 days from deadline for distributing Notices)
August 17, 2011	Deadline for filing motions for service awards and attorneys' fees and expenses (14 days from date of preliminary approval)
September 7, 2011	Deadline for filing motions for final settlement approval (35 days before Final Approval Hearing)
October 5, 2011	Reply papers due
October 12, 2011	Final Approval Hearing

Respectfully Submitted,

Dated: June 17, 2011

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